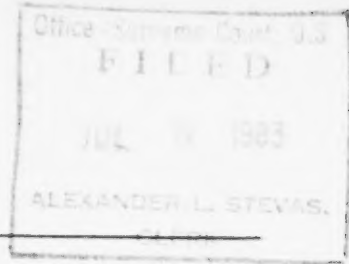

No. 82-2026



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

JOSEPH H. WESTON *Petitioner*

vs.

ANN BACHMAN ET AL *Respondents*

ON PETITION FOR
WRIT OF CERTIORARI
TO THE EIGHTH CIRCUIT COURT OF APPEALS

SUPPLEMENTARY INDEX

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MEMORANDUM NOTING PREVIOUSLY
SUBMITTED RELATED ORDERS OF DISTRICT
COURT THAT ARE INCLUDED IN APPENDIX OF
MAY 31, 1983 PETITION FOR CERTIORARI
IN THIS CASE IN THE SUPREME COURT

1. Nov. 10, 1980 order of district court that granted Plaintiff Weston an *indefinite* amount of time in which to file his original complaint that had been rejected previously — found on Page A5 of the Appendix to the May 31, 1983 petition of certiorari in this Court;

2. Judge Overton's Nov. 3, 1982 order in answer to the Appeals Court's July 7, 1982 Remand, found on Page A6 of the Appendix to the May 31, 1983 petition before this Court;

3. Judge Overton's Sept. 30, 1981 order in district court that had dismissed the entire matter in controversy, found on Page A2 of the Appendix to the May 31, 1983 petition in this Court.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

NO. 81-2112

Joseph H. Weston,

★

★

Appellant, ★

★ Appeal from the United

v.

★ States District Court

★ for the Eastern District

Ann Bachman; Nancy Brokaw; ★ of Arkansas.

Jean Hall; Jackie Hall; John ★

Norman Harkey; Circuit Judge ★

Andrew G. Ponder; Leroy Blank-★

enship, Attorney; Circuit Judge ★

H. A. Taylor; Robert Dudley, ★

Associate Justice of Arkansas ★

Supreme Court; Veda M. Gordon, ★

Foreman of Grand Jury; R. Ford ★

Wilkinson; Dr. Robert McChesney; ★

Dr. J. Lynn Mellor; Independence ★

County; Attorney General Steve ★

Clark, as respondent to suits against ★

Arkansas; Conley Byrd; George ★

Smith; Frank Holt; Darrell Hick-★

man; Stephen A. Matthews; Rich-★

ard H. Wooton; Richard A. Cobb; ★

State of Arkansas; Little Rock, ★

Arkansas, Stake of Church of ★

Jesus Christ of Latter Day Saints, ★

John I. Purtle; Richard Mays; and ★

John Stroud, ★

Appellees. ★

Submitted: June 14, 1982

Filed: July 7, 1982

Before HEANEY and ROSS, Circuit Judges, and STEVENS,*
District Judge.

*The HONORABLE JOSEPH E. STEVENS, JR., United States District Judge, United States District Court for the Western District of Missouri, sitting by designation.

HEANEY, Circuit Judge.

Joseph H. Weston appeals from a district court order granting the defendants' motions to dismiss his civil rights action brought under 42 U.S.C. §§ 1983, 1985 and 1986. The district court¹ held that the plaintiff failed to establish that his constitutional rights were violated, that certain defendants were not acting under color of state law, that certain defendants were immune from suit and, finally, that the complaint was barred by the applicable statute of limitations. We remand for further proceedings consistent with this opinion.

Section 1983 does not contain its own statute of limitations. Therefore, in determining the proper limitations period in a Section 1983 action, the state statute governing actions most analogous to the civil rights claim is applied. *Garmon v. Foust*, 668 F. 2d 400, 402-403 (8th Cir. 1982). The district court correctly determined that Weston's complaint was subject to the three-year limitations period provided by Ark. Stat. Ann. §37-206. See *Clark v. Mann*, 562 F. 2d 1104, 1111-1112 (8th Cir. 1977).

Weston filed a request in the district court to proceed in

¹The Honorable William F. Overton, United States District Court Judge for the Eastern District of Arkansas.

forma pauperis on October 22, 1980. A copy of the complaint was attached to the request. The district court denied the request on November 10, 1980. Thereafter, Weston paid the filing fee and refiled his complaint on May 15, 1981. The complaint alleged, in essence, that the defendants conspired against Weston in retaliation for derogatory remarks about Independence County Circuit Judge Andrew Ponder and Leroy Blankenship, a former prosecutor for Independence County, during their campaigns for circuit court judgeships in 1977. Weston contended that conspiracy was effectuated through the misuse of a grand jury to indict him, libel suits against him and his excommunication from the Mormon Church.

The district court determined that the plaintiff's cause of action accrued on November 19, 1977, when he was indicted by an Independence County grand jury. Accordingly, it held that Weston's complaint, filed on May 15, 1981, was barred by Arkansas's three-year statute of limitations which ran on November 19, 1980. The issue before this Court is whether Weston satisfied the statute of limitations by filing within the limitations period on October 22, 1980, his complaint and motion to proceed *in forma pauperis*.

This Court recently held in *Whittle v. Wiseman*, No. 81-1935 at 2 (8th Cir. Apr. 16, 1982), that "in applying [Ark. Stat. Ann.] § 37-206 to civil rights actions, we recognize decisions of the Arkansas Supreme Court regarding the applicability of the saving statute to claims subject to the three-year limitation as we have in contexts other than civil rights litigation." In *Whittle*, the plaintiff commenced an action under 42 U.S.C. § 1983, within the three-year statute of limitations. *Id.* at 1-2. The action was subsequently dismissed for failure to prosecute. *Id.* The plaintiff then refiled her suit after the limitations period had run, contending that it was "saved" by Ark. Stat. Ann. § 37-222, which provides that if an action is initiated within the statutory time limit and is dismissed without prejudice, the plaintiff may commence a

new action within one year of the dismissal. *Id.* at 2. This Court remanded the matter to the district court to determine whether Ark. Stat. Ann. § 37-222 "saved" the plaintiffs' section 1983 claim. *Id.* at 2-3.

The district court here did not address the question of whether Weston's *in forma pauperis* application tolled the statute of limitations. Moreover, it issued its order prior to our disposition of *Whittle v. Wiseman*, *supra*. Accordingly, it is appropriate to remand this matter to the district court to determine whether Ark. Stat. Ann. § 37-222, or any of the other Arkansas savings statutes, Ark. Stat. Ann. § 37-101 *et seq.*, are applicable to plaintiff's action in the circumstances presented in this case. Apart from any interpretation of the Arkansas saving statutes, the district court also should determine whether, under Arkansas law, the statute of limitations is tolled by filing a complaint and a motion to proceed *in forma pauperis* or whether equitable considerations require the paid filing to be related back to the initial *in forma pauperis* filing for statute of limitations purposes.

We need not at this time review the district court's alternative holdings that the plaintiff failed to establish that his constitutional rights were violated, that certain defendants were not acting under color of state law and that certain defendants were immune from suit. We retain jurisdiction over these issues and, if necessary, we will review them along with any remaining statute of limitations questions if an appeal is taken from the district court's judgment on remand. Therefore, we vacate the district court's judgment concerning the statute of limitations, and remand for proceedings consistent with this opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 81-2112 & 82-2433

Joseph H. Weston,

★

★

Appellant, ★

★ Appeal from the United

★ States District Court

★ for the Eastern District

v.

★ of Arkansas.

Ann Bachman; Nancy Brokaw; ★

Jean Hall; Jackie Hall; John ★

Norman Harkey; Circuit Judge ★

Andrew G. Ponder; Leroy Blank- ★

enship, Attorney; Circuit Judge ★

H. A. Taylor; Robert Dudley, ★

Associate Justice of Arkansas ★

Supreme Court; Veda M. Gordon, ★

Foreman of Grand Jury; R. Ford ★

Wilkinson; Dr. Robert McChesney; ★

Dr. J. Lynn Mellor; Independence ★

County; Attorney General Steve ★

Clark, as respondent to suits against ★

Arkansas; Conley Byrd; George ★

Smith; Frank Holt; Darrell Hick- ★

man; Stephen A. Matthews; Rich- ★

ard H. Wooton; Richard A. Cobb; ★

State of Arkansas; Little Rock, ★

Arkansas, Stake of Church of ★

Jesus Christ of Latter-day Saints; ★

John I. Purtle; Richard Mays; and ★

John Stroud, ★

Appellees. ★

Submitted: June 14, 1982

Filed: March 15, 1983

Before HEANEY and ROSS, Circuit Judges, and STEVENS,*
District Judge.

*The HONORABLE JOSEPH E. STEVENS, JR., United States District Judge, United States District Court for the Western District of Missouri, sitting by designation.

ORDER

This matter is before the Court for a second time. When it was first here, we remanded the matter to the district court with directions to it to reconsider whether the statute of limitations had been tolled. We retained jurisdiction of the matter.

The district court has now considered the matter and has held

1) no Ark. Savings Statute, found at Ark. Stat. Ann. §37-101 (1962), *et seq.*, and particularly Ark. Stat. Ann. §37-222 (1962) applied to the circumstances of this case to save the case; 2) that under Arkansas law, the statute of limitations is not tolled by filing of a complaint and a motion to proceed *in forma pauperis*; and 3) that equitable considerations do not require the paid filing to be related back to the initial *in forma pauperis* filing for statute of limitations purposes.

The judgment of the district court is affirmed on the basis of its well-reasoned opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

4/15/83

Costs taxed in favor of Appellees:

Total costs of Appellees for briefs
for recovery from Appellant: \$123.50

Filed April 20, 1983

United States Court of Appeals

For the Eighth Circuit

March 15, 1983

Mr. Joseph H. Weston
Ms. R. B. Friedlander
Mr. Bill W. Bristow
Mr. Oscar W. McConkie
Mr. Richard L. Smith
Mr. David Clark
Mr. John Norman Harkey
Mr. Robert M. McChesney

Re: 81-2112/82-2433-EA

Joseph H. Weston v. Ann
Bachman, et al

Dear Counsel:

Enclosed is a copy of the order of this Court filed today in the above case. Judgment in accordance with the opinion is also entered today. This order will not be published in accordance with directions received from the Court.

Please consult the appropriate Federal Rules of Appellate Procedure and the Eighth Circuit Rules (15 & 16) for post-opinion procedure, particularly Circuit Rule 16 (d).

Your attention is also directed to Federal Rule of Appellate Procedure 39 and Eighth Circuit Rules 7 (f) and 8 (j). Itemized and verified bills of costs are to be filed in this office with proof of service *within 14 days from this date*. We would appreciate it if counsel for the prevailing party would *promptly* forward to us an itemized bill of costs for the reproduction of the authorized number of copies of their briefs. If the prevailing party fails to submit an itemized bill of costs on a timely basis, this office will assume that the right to

recoup costs has been waived. Itemized bills of costs which are not timely filed will not be processed without a special order of the Court. Similarly, objections to requested bills of costs must also be submitted on a timely basis — within 10 days of the bill of costs.

Your prompt attention to this request will be appreciated.

Sincerely,

/s/ Robert D. St. Vrain
Clerk of Court

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 81-2112.	)	September Term, 1981
)	
Joseph H. Weston, Appellant,)	
	)	Appeal from the United
vs.	)	States District Court for the
	)	Eastern District of Arkansas.
Ann Bachman, et al.,)	
Appellees.)	
)	

Opinion of this Court vacating in part judgment of the District Court and remanding the case to the District Court for limited proceedings was filed July 7, 1982. On August 3, 1982, this Court issued mandate herein improvidently.

It is hereby ordered that the mandate of this Court previously issued and assessing costs be rescinded. The Clerk of the District Court is directed to return same to the Clerk of this Court.

Award of costs on appeal will be deferred until further order of the Court.

August 6, 1982

A true copy:

ATTEST:

/s/ Chief Deputy Clerk, U.S. Court of Appeals,
Eighth Circuit

Filed August 9, 1982

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 81-2112

September Term, 1982

Joseph H. Weston, •
Appellant, •
• Appeal from the United States
• District Court for the Eastern
• District of Arkansas
v. •

Ann Bachman; Nancy •
Brokaw, et al., •
Appellees. •

Appellant's documents entitled "Motion to Present Information for the Court" and "Attorney's Appeal for Action by District Court" have been treated by the court as a petition for writ of mandamus. Said petition is hereby denied.

September 15, 1982

Filed September 20, 1982

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 81-2112	)	September Term, 1982
)	
Joseph H. Weston,)	
Appellant,)	
	)	Appeal from the United States
	)	District Court for the Eastern
	)	District of Arkansas

vs.

Ann Bachman, et al.,)
Appellees.)

Appellant's "Motion for Direct Action by Appellate Court in the Matter of State Statutes of Limitations" has been treated by the Court as a petition for writ of mandamus, and same is hereby denied.

September 22, 1982

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 82-2433-EA

Joseph H. Weston,	•	
Appellant,	•	
	•	Appeal from the United States
	•	District Court for the Eastern
	•	District of Arkansas
v.	•	
	•	
Ann Bachman, et al.,	•	
Appellees.	•	

The Court will consider this appeal on the original files of the United States District Court in lieu of the designated record required by Circuit Rule 7. The Clerk of the United States District Court for the Eastern District of Arkansas is requested to forward the original files in case B C 81-45 to this Court.

November 29, 1982

Filed December 1, 1982

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 81-2112 and 82-2433)

Joseph H. Weston,)
Appellant,)

) Appeals from the United States
) District Court for the Eastern
) District of Arkansas

vs.)

)
Ann Bachman; Nancy)
Brokaw; Jean Hill;)
Jackie Hall; John)
Norman Harkey, et al,)
Appellees.)

Petition of appellant for rehearing filed in this cause
having been considered, it is now here ordered by this Court
that the same be, and it is hereby, denied.

April 8, 1983

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 81-2112 and 82-2433

Joseph H. Weston,)	
Appellant,)	
	)	Appeal from the United States
	)	District Court for the Eastern
	)	District of Arkansas
v.)	
)	
Ann Bachman, et al.,)	
Appellees.)	

It is now here ordered by the Court that appellees' motion for costs under Eighth Circuit Rule 16 (e) against appellant is denied.

And it is further ordered that appellant's motion to stay mandate pending petition for writ of certiorari is denied.

May 3, 1983

Filed May 5, 1983

CERTIFICATE

In respectfully submitting this Supplemental Appendix, Petitioner certifies that it contains all orders of the 8th Circuit Court of Appeals *that he has received* from and including the July 7, 1982 mandate to and including the denial of mandate pending preparation of a Petition of Certiorari to the Supreme Court, on May 3, 1983.

/s/ Joseph H. Weston
P. O. Box 84
Cave City, Ark. 72521
Telephone (501) 283-5150

Pro Se

AFFIDAVIT OF SERVICE

I, Joseph H. Weston, do solemnly swear and affirm that on this Second Day of July, 1983, I have served by mail three copies to each of the following official counsel of record:

1. a. The Solicitor General of the United States;

b. Honorable Steve Clark, Attorney General of the State of Arkansas, Justice Building, State Capitol, Little Rock, Ark. 72201

2. And have served three copies to each of the following listed private counsel of record:

Mr. John Norman Harkey, P.O. Box 2535, Batesville, Ark. 72501

Mr. David Clark, P.O. Box 2476, Batesville, Ark. 72501;

Mr. Bill W. Bristow, 216 E. Washington St., Jonesboro, Ark. 72401

Mr. Richard L. Smith, Suite 305, 300 Spring Building, Little Rock, Ark. 72201

Mr. Oscar W. McConkey, 330 S. Third East, Salt Lake City, Utah 84111

/s/ Joseph H. Weston,
Pro Se Petitioner

NOTARIZATION

Subscribed to and sworn before me this Second Day of July, 1983. — Patricia A. Parker, Notary Public. My Commission expires February 25, 1985.